

Message Text

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S/S - MR. BRIDGES

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P 172218Z SEP 76

FM SECSTATE WASHDC

TO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY

USMISSION USUN NEW YORK PRIORITY

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C O N F I D E N T I A L STATE 231122

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INFORM CONSULS

E.O. 11652: GDS

TAGS: SHUM, PFOR, PINS, PINT, PORG, EAID, EFIN

SUBJECT: GUIDANCE ON HUMAN RIGHTS PROVISIONS OF NEW
SECURITY ASSISTANCE LEGISLATION

REF: STATE 045319

FOR AMBASSADORS AND MAAG CHIEFS (AND PO ADS)

KUWAIT PLEASE POUCH BAGHDAD

BEGIN UNCLASSIFIED

1. SUMMARY: ON JUNE 30, PRESIDENT SIGNED INTERNATIONAL
SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976.
SECTION 301 OF ACT CONTAINS EXTENSIVE REVISION OF
SECTION 502B OF 1961 FOREIGN ASSISTANCE ACT, AS AMENDED.
NEW LEGISLATION PROVIDES EXPLICIT CONGRESSIONAL POLICY
GUIDANCE ON HUMAN RIGHTS MATTERS AND DEFINITELY
LINKS PROVISION OF SECURITY ASSISTANCE TO HUMAN RIGHTS
OBSERVANCE BY SECURITY ASSISTANCE RECIPIENTS AND
PROMOTION SUCH OBSERVANCE BY EXECUTIVE BRANCH. POSTS
IN COUNTRIES WITH WHICH U.S. HAS OR EXPECTS TO HAVE
SECURITY ASSISTANCE PROGRAMS (SEE DEFINITION IN TEXT
OF ACT BELOW) ARE REQUESTED TO BRING HUMAN RIGHTS

PROVISIONS THIS LEGISLATION TO ATTENTION OF HOST
GOVERNMENT PERSONNEL AT APPROPRIATE LEVELS AND TO
REPORT REACTIONS. THIS MESSAGE IS PRIMARILY FOR THE
INFORMATION OF POSTS IN NON-SECURITY ASSISTANCE COUNTRIES
ALTHOUGH THEY ARE NOT RESTRICTED FROM INFORMING HOST
GOVERNMENTS ABOUT THIS IMPORTANT NEW LEGISLATION IF
THEY DEEM IT USEFUL TO DO SO. END SUMMARY.

2. TEXT OF SECTION 301 OF INTERNATIONAL SECURITY
ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976
FOLLOWS:
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-----"HUMAN RIGHTS

-- SEC. 301.(A) SECTION 502B OF THE FOREIGN ASSISTANCE
ACT OF 1961 IS AMENDED TO READ AS FOLLOWS:
-- "SEC. 502B. HUMAN RIGHTS.--(A)(1) IT IS THE POLICY
OF THE UNITED STATES, IN ACCORDANCE WITH ITS INTER-
NATIONAL OBLIGATIONS AS SET FORTH IN THE CHARTER OF
THE UNITED NATIONS AND IN KEEPING WITH THE
CONSTITUTIONAL HERITAGE AND TRADITIONS OF THE UNITED
STATES, TO PROMOTE AND ENCOURAGE INCREASED RESPECT
FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR ALL WITH-
OUT DISTINCTION AS TO RACE, SEX, LANGUAGE, OR
RELIGION. TO THIS END, A PRINCIPAL GOAL OF THE

FOREIGN POLICY OF THE UNITED STATES IS TO PROMOTE THE INCREASED OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS BY ALL COUNTRIES.

-- "(2) IT IS FURTHER THE POLICY OF THE UNITED STATES THAT, EXCEPT UNDER CIRCUMSTANCES SPECIFIED IN THIS SECTION, NO SECURITY ASSISTANCE MAY BE PROVIDED TO ANY COUNTRY THE GOVERNMENT OF WHICH ENGAGES IN A CONSISTENT PATTERN OF GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.

-- "(3) IN FURTHERANCE OF THE FOREGOING POLICY THE PRESIDENT IS DIRECTED TO FORMULATE AND CONDUCT INTERNATIONAL SECURITY ASSISTANCE PROGRAMS OF THE UNITED STATES IN A MANNER WHICH WILL PROMOTE AND ADVANCE HUMAN RIGHTS AND AVOID IDENTIFICATION OF THE UNITED STATES, THROUGH SUCH PROGRAMS, WITH GOVERNMENTS WHICH DENY TO THEIR PEOPLE INTERNATIONALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, IN VIOLATION OF INTERNATIONAL LAW OR IN CONTRAVENTION OF THE POLICY OF THE UNITED STATES AS EXPRESSED IN THIS SECTION OR OTHERWISE.

-- "(B) THE SECRETARY OF STATE SHALL TRANSMIT TO THE CONGRESS, AS PART OF THE PRESENTATION MATERIALS FOR SECURITY ASSISTANCE PROGRAMS PROPOSED FOR EACH FISCAL YEAR, A FULL AND COMPLETE REPORT, PREPARED WITH THE CONFIDENTIAL

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ASSISTANCE OF THE COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, WITH RESPECT TO PRACTICES REGARDING THE OBSERVANCE OF AND RESPECT FOR INTERNATIONALLY RECOGNIZED HUMAN RIGHTS IN EACH COUNTRY PROPOSED AS A RECIPIENT OF SECURITY ASSISTANCE. IN DETERMINING WHETHER A GOVERNMENT FALLS WITHIN THE PROVISIONS OF SUBSECTION (A)(3) AND IN THE PREPARATION OF ANY REPORT OR STATEMENT REQUIRED UNDER THIS SECTION, CONSIDERATION SHALL BE GIVEN TO--

-- "(1) THE RELEVANT FINDINGS OF APPROPRIATE INTERNATIONAL ORGANIZATIONS, INCLUDING NONGOVERNMENTAL ORGANIZATIONS, SUCH AS THE INTERNATIONAL COMMITTEE OF THE RED CROSS; AND

-- "(2) THE EXTENT OF COOPERATION BY SUCH GOVERNMENT IN PERMITTING AN UNIMPEDED INVESTIGATION BY ANY SUCH ORGANIZATION OF ALLEGED VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.

-- "(C)(1) UPON THE REQUEST OF THE SENATE OR THE HOUSE OF REPRESENTATIVES BY RESOLUTION OF EITHER SUCH HOUSE, OR UPON THE REQUEST OF THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE OR THE COMMITTEE ON INTERNATIONAL

RELATIONS OF THE HOUSE OF REPRESENTATIVES, THE SECRETARY OF STATE SHALL, WITHIN THIRTY DAYS AFTER RECEIPT OF SUCH REQUEST, TRANSMIT TO BOTH SUCH COMMITTEES A STATEMENT, PREPARED WITH THE ASSISTANCE OF THE COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, WITH RESPECT TO THE COUNTRY DESIGNATED IN SUCH REQUEST, SETTING FORTH--

-- "(A) ALL THE AVAILABLE INFORMATION ABOUT OBSERVANCE OF AND RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOM IN THAT COUNTRY, AND A DETAILED DESCRIPTION OF PRACTICES BY THE RECIPIENT GOVERNMENT WITH RESPECT THERETO:

-- "(B) THE STEPS THE UNITED STATES HAS TAKEN TO--

-- "(I) PROMOTE RESPECT FOR AND OBSERVANCE OF HUMAN RIGHTS IN THAT COUNTRY AND DISCOURAGE ANY PRACTICES WHICH ARE INIMICAL TO INTERNATIONALLY RECOGNIZED HUMAN RIGHTS, AND
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-- "(II) PUBLICLY OR PRIVATELY CALL ATTENTION TO, AND DISASSOCIATE THE UNITED STATES AND ANY SECURITY ASSISTANCE PROVIDED FOR SUCH COUNTRY FROM, SUCH PRACTICES;

-- "(C) WHETHER, IN THE OPINION OF THE SECRETARY OF STATE, NOTWITHSTANDING ANY SUCH PRACTICES--

-- "(I) EXTRAORDINARY CIRCUMSTANCES EXIST WHICH NECESSITATE A CONTINUATION OF SECURITY ASSISTANCE FOR SUCH COUNTRY, AND, IF SO, A DESCRIPTION OF SUCH CIRCUMSTANCES AND THE EXTENT TO WHICH SUCH ASSISTANCE SHOULD BE CONTINUED (SUBJECT TO SUCH CONDITIONS AS CONGRESS MAY IMPOSE UNDER THIS SECTION), AND

-- "(II) ON ALL THE FACTS IT IS IN THE NATIONAL INTEREST OF THE UNITED STATES TO PROVIDE SUCH ASSISTANCE; AND

-- "(D) SUCH OTHER INFORMATION AS SUCH COMMITTEE OR SUCH HOUSE MAY REQUEST.

-- "(2)(A) A RESOLUTION OF REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSIDERED IN THE SENATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 601(B) OF THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976.

-- "(B) THE TERM 'CERTIFICATION', AS USED IN SECTION 601 OF SUCH ACT, MEANS, FOR THE PURPOSES OF THIS SUBSECTION, A RESOLUTION OF REQUEST OF THE SENATE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

--"(3) IN THE EVENT A STATEMENT WITH RESPECT TO A

COUNTRY IS REQUESTED PURSUANT TO PARAGRAPH (1) OF THIS SUBSECTION BUT IS NOT TRANSMITTED IN ACCORDANCE THEREWITH WITHIN THIRTY DAYS AFTER RECEIPT OF SUCH REQUEST, NO SECURITY ASSISTANCE SHALL BE DELIVERED TO SUCH COUNTRY EXCEPT AS MAY THEREAFTER BE SPECIFICALLY AUTHORIZED BY LAW FROM SUCH COUNTRY UNLESS AND UNTIL SUCH STATEMENT IS TRANSMITTED.

-- ,(4)(A) IN THE EVENT A STATEMENT WITH RESPECT TO A CONFIDENTIAL

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COUNTRY IS TRANSMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CONGRESS MAY AT ANY TIME THEREAFTER ADOPT A JOINT RESOLUTION TERMINATING, RESTRICTING, OR CONTINUING SECURITY ASSISTANCE FOR SUCH COUNTRY. IN THE EVENT SUCH A JOINT RESOLUTION IS ADOPTED, SUCH ASSISTANCE SHALL BE SO TERMINATED, SO RESTRICTED, OR SO CONTINUED, AS THE CASE MAY BE.

-- "(B) ANY SUCH RESOLUTION SHALL BE CONSIDERED IN THE SENATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 601(B) OF THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976.

-- "(C) THE TERM 'CERTIFICATION', AS USED IN SECTION 601 OF SUCH ACT, MEANS, FOR THE PURPOSES OF THIS PARAGRAPH, A STATEMENT TRANSMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

-- "(D) FOR THE PURPOSES OF THIS SECTION--

-- "(1) THE TERM 'GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS' INCLUDES TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT, PROLONGED DETENTION WITHOUT CHARGES AND TRIAL, AND OTHER FLAGRANT DENIAL OF THE RIGHT TO LIFE, LIBERTY, OR THE SECURITY OF PERSON; AND

-- "(2) THE TERM 'SECURITY ASSISTANCE' MEANS--

-- "(A) ASSISTANCE UNDER CHAPTER 2 (MILITARY ASSISTANCE) OR CHAPTER 4 (SECURITY SUPPORTING ASSISTANCE) OR CHAPTER 5 (MILITARY EDUCATION AND TRAINING) OF THIS PART OR PART VI (ASSISTANCE TO THE MIDDLE EAST) OF THIS ACT;

-- "(B) SALES OF DEFENSE ARTICLES OR SERVICES, EXTENSIONS OF CREDITS (INCLUDING PARTICIPATIONS IN CREDITS, AND GUARANTIES OF LOANS UNDER THE ARMS EXPORT CONTROL ACT; OR

-- "(C) ANY LICENSE IN EFFECT WITH RESPECT TO THE EXPORT OF DEFENSE SERVICES TO OR FOR THE ARMED FORCES, POLICE, INTELLIGENCE, OR OTHER INTERNAL SECURITY FORCES OF A FOREIGN COUNTRY UNDER SECTION 38 OF THE ARMS EXPORT CONTROL ACT."

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-- ,(B) SECTION 624 OF THE FOREIGN ASSISTANCE ACT OF 1961 IS AMENDED BY ADDING AT THE END THEREOF THE FOLLOWING NEW SUBSECTION:

-- "(F)(1) THERE IS ESTABLISHED IN THE DEPARTMENT OF STATE A COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS. THE COORDINATOR SHALL BE APPOINTED BY THE PRESIDENT WITH THE ADVICE AND CONSENT OF THE SENATE. HE SHALL BE RESPONSIBLE TO THE SECRETARY OF STATE FOR MATTERS PERTAINING TO HUMAN RIGHTS AND HUMANITARIAN AFFAIRS (INCLUDING MATTERS RELATING TO REFUGEES, PRISONERS OF WAR, AND MEMBERS OF THE UNITED STATES ARMED FORCES MISSING IN ACTION) IN THE CONDUCT OF FOREIGN POLICY. THE SECRETARY OF STATE SHALL CARRY OUT HIS RESPONSIBILITY UNDER SECTION 502B OF THIS ACT THROUGH THE COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS.

-- "(2) THE COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS SHALL MAINTAIN CONTINUOUS OBSERVATION AND REVIEW OF ALL MATTERS PERTAINING TO HUMAN RIGHTS AND HUMANITARIAN AFFAIRS (INCLUDING MATTERS RELATING TO REFUGEES, PRISONERS OF WAR, AND MEMBERS OF THE UNITED STATES ARMED FORCES MISSING IN ACTION) IN THE CONDUCT OF FOREIGN POLICY INCLUDING--

-- "(A) GATHERING DETAILED INFORMATION REGARDING HUMANITARIAN AFFAIRS AND THE OBSERVANCE OF AND RESPECT FOR INTERNATIONALLY RECOGNIZED HUMAN RIGHTS IN EACH COUNTRY TO WHICH REQUIREMENTS OF SECTION 116 AND 502B OF THIS ACT ARE RELEVANT;

-- "(B) PREPARING THE STATEMENTS AND REPORTS TO CONGRESS REQUIRED UNDER SECTION 502B OF THIS ACT;

-- "(C) MAKING RECOMMENDATIONS TO THE SECRETARY OF STATE AND THE ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT REGARDING COMPLIANCE WITH SECTION 116 AND 502B OF THIS ACT; AND

-- "(D) PERFORMING OTHER RESPONSIBILITIES WHICH SERVE TO PROMOTE INCREASED OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS BY ALL COUNTRIES."

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END UNCLASSIFIED.

3. BEGIN CONFIDENTIAL. THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976 IS NOW LAW. THIS LEGISLATION REFLECTS STRONGLY HELD VIEWS IN THE CONGRESS AND IN THE AMERICAN PUBLIC ON LIMITING

USG SUPPORT OF CLEARLY REPRESSIVE GOVERNMENTS AND DOING MORE GENERALLY IN FOREIGN POLICY TO PROMOTE THE INTERNATIONAL OBSERVANCE AND PROTECTION OF HUMAN RIGHTS. THE DEPARTMENT AGREES WITH THESE GOALS. WE SEEK TO ESTABLISH A RECORD OF CREDIBLE AND RESPONSIVE COMPLIANCE WITH THIS LEGISLATION. ONLY THUS WILL WE BE ABLE TO EFFECTIVELY ADVANCE IMPORTANT SECURITY INTERESTS AND TO WORK OUT A POSITIVE, MEASURED, LONG-TERM AND NON-PUNITIVE EXECUTIVE AND LEGISLATIVE BRANCH APPROACH TO THE GOAL OF GENERALLY IMPROVED HUMAN RIGHTS OBSERVANCE ON THE PART OF ALL GOVERNMENTS.

4. PURSUANT TO SUBSECTION (A) OF THE LEGISLATION, PROPOSALS FOR A BASIC HUMAN RIGHTS STRATEGY ARE BEING DEVELOPED AND STUDIED. POSTS WILL BE KEPT INFORMED OF PROGRESS THIS EFFORT. MEANWHILE, HUMAN RIGHTS CONSIDERATIONS WILL BE CONSIDERED IN FORMULATION AND APPROVAL OF FY 78-79 SECURITY ASSISTANCE PROGRAMS BY INTERAGENCY SECURITY ASSISTANCE PROGRAM REVIEW COMMITTEE.

5. SUBSECTION (B) OF THE LEGISLATION REQUIRES THAT COUNTRY-BY-COUNTRY HUMAN RIGHTS OBSERVANCE REPORTS BE SUBMITTED AS A PART OF THE ANNUAL SECURITY ASSISTANCE CONGRESSIONAL PRESENTATION, BEGINNING WITH THE FY 1978 PRESENTATION. SUCH REPORTS, KEYED TO THE REPORTING OUTLINE OF THE REFERENCE, WERE DRAFTED FOR THE CURRENT YEAR IN ANTICIPATION OF LEGISLATIVE REQUIREMENT. WE EXPECT TO SUBMIT REPORTS WITH PRESENTATION OF FY 1978 PROGRAM IN JANUARY, 1977. THE DRAFT REPORTS REMAIN IN THE CLEARANCE STAGE AND WILL BE REVIEWED BY THE DEPARTMENT AND SENT TO POSTS FOR COMMENT BEFORE ANY FINAL ACTION IS TAKEN ON THEM. THE REPORTS WILL BE UNCLASSIFIED AND ARE DESIGNED TO BE FULL, FACTUAL AND OBJECTIVE WHILE AVOIDING UNNECESSARY CONFIDENTIAL

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DAMAGE TO BILATERAL RELATIONS.

6. SUBSECTION (C) OF THE LEGISLATION IS LIKELY TO BE THE MOST DIFFICULT TO IMPLEMENT. WE HAVE INFORMAL UNDERSTANDINGS WITH THE CONGRESS THAT SENSITIVE PORTIONS OF THE REPORTS CALLED FOR UNDER THE SUBSECTION MAY BE CLASSIFIED AND THAT WE EXPECT CLASSIFICATION TO BE RESPECTED BY LEGISLATIVE BRANCH. HOWEVER, WE MUST ALSO ACCEPT THE POSSIBILITY OF UNAUTHORIZED LEAKS WHICH MAY BE OBJECTIONABLE TO FOREIGN GOVERNMENTS.

7. SUBSECTION (C) REPORTS MUST BE PREPARED WITHIN 30 DAYS OF RECEIPT OF CONGRESSIONAL REQUEST. POSTS IN COUNTRIES WHICH ARE SUBJECTS OF SUCH REQUESTS WILL BE

INFORMED BY CABLE. IN MEANTIME, POSTS SHOULD KEEP
HUMAN RIGHTS INFORMATION UNDER CONTINUING REVIEW.

8. IN CONNECTION ALSO WITH SUBSECTION (C), POSTS ARE
DIRECTED TO REVIEW STEPS U.S. HAS TAKEN TO PROMOTE
RESPECT FOR AND OBSERVANCE OF HUMAN RIGHTS IN HOST
COUNTRY AND TO DISCOURAGE ANY PRACTICES WHICH ARE
INIMICAL TO INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.
ACTION BY POSTS, PRIVATELY OR PUBLICLY, PURSUANT TO
DEPARTMENT INSTRUCTIONS AND GUIDANCE TO CALL
ATTENTION TO AND DISSOCIATE UNITED STATES AND ANY
ASSISTANCE PROVIDED FOR HOSTS COUNTRY FROM SUCH PRACTICES
AND TO PROMOTE HUMAN RIGHTS SHOULD ALSO BE REVIEWED (SEE
75 STATE 1828-3., --

9. SUBSECTION (D) DEFINITIONS OF HUMAN RIGHTS TERMS
ARE ILLUSTRATIVE ONLY. SUCH RIGHTS ARE AUTHORITATIVELY
STATED IN UN UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)
OF 1948 AND PARTICULAR LEGISLATIVE EMPHASIS IS PUT ON
'FLAGRANT DENIAL OF THE RIGHT TO LIFE, LIBERTY OR THE
SECURITY OF PERSON," PARTICULARLY TORTURE AND PROLONGED
DETENTION WITHOUT CHARGES AND TRIAL. (UDHR ATTACHED
75 STATE AIRGRAM A-1045.)

10. LEGISLATION PROVIDES FOR ESTABLISHMENT IN DEPARTMENT
OF PRESIDENTIALLY-APPOINTED COORDINATOR FOR HUMAN RIGHTS
AND HUMANITARIAN AFFAIRS. ACTION TO IMPLEMENT THE
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SUBSECTION IS UNDERWAY.

11. ACTION REQUESTED: POSTS IN COUNTRIES WITH WHICH
U.S. HAS OR EXPECTS TO HAVE SECURITY ASSISTANCE PROGRAMS
(SEE DEFINITION OF SECURITY ASSISTANCE IN ACT) SHOULD
PROVIDE HOST GOVERNMENTS, AT AN APPROPRIATE LEVEL, WITH
TEXT OF HUMAN RIGHTS PROVISIONS OF SECURITY ASSISTANCE
LEGISLATION, AND REPORT REACTIONS, IF ANY. THIS MESSAGE
MAY BE REGARDED AS PRIMARILY FOR THE INFORMATION OF
POSTS IN COUNTRIES WITH WHICH WE HAVE NO SECURITY
ASSISTANCE PROGRAMS, ALTHOUGH THEY MAY INFORM HOST
GOVERNMENTS ABOUT THIS LEGISLATION IF THEY CONSIDER
IT USEFUL TO DO SO. (THE DEPARTMENT IS CONSIDERING
SENDING A CIRCULAR NOTE TO MISSIONS RESIDENT IN
WASHINGTON OUTLINING PROVISIONS OF THE NEW SECURITY
ASSISTANCE LEGISLATION AND INVITING THEM TO SEND
REPRESENTATIVES TO BRIEFING BY DEPARTMENTAL
REPRESENTATIVES ON KEY FEATURES OF THE LEGISLATION,
INCLUDING HUMAN RIGHTS.) END CONFIDENTIAL. ROBINSON

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CINCEUR
SECDEF

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